IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Criminal Appeal No.1553/2003

Bhawani S/o Dayala Ram
...Accused-appellant
Versus
The State of Rajasthan through
Public Prosecutor
...Respondent

Date of Judgment :::: 27th February, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Suresh Dhenwal and
Shri Rohitash Choudhary, Advocates for
Shri Praveen Balwada, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
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By the Court:-

Heard learned counsel for the parties.

Accused-appellant Bhawani S/o Dayala Ram has preferred this criminal appeal under Section 374 (2), Cr.P.C., challenging the judgment and order of his conviction and sentence dated 14.10.2003 passed by the Additional District & Sessions Judge (Fast Track) Behror, District Alwar, in Sessions Case No.80/2002, whereby he has been convicted and sentenced under Section 376 (1) of the Indian Penal Code, to eight years rigorous imprisonment and a

fine of Rs.2000/- (Rupees two thousand); in default of payment of fine, to further undergo six months simple imprisonment.

The learned counsel for the accused-appellant argued the case at length, but, during the course of arguments, in view of the statement of the prosecutrix Sangeeta (PW-1), did not press the appeal on merits and contended that the appellant has already remained in jail for more than five years, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned Public Prosecutor, appearing on behalf of the State, contended that there is specific allegation of commission of offence against the accused-appellant, therefore, the judgment passed by the learned trial court does not call for any interference by this Court.

I have also examined the impugned judgment as well as the record of the trial court.

Exhibit P-2, F.I.R. No.11/2002, was registered at Police Station Shahajahapur (Alwar), under Section 376, IPC, on the basis of written-report submitted by the prosecutrix Sangeeta Bai, wherein it was alleged that on 16.1.2002 when she had gone for natural call the accused-appellant Bhawani

caught-hold of her and committed rape with her. After completion of investigation, a challan was filed against the accused-appellant under Section 376, IPC.

The learned trial court framed charge under Section 376 (1) IPC, against the accused-appellant, which he denied and claimed to be tried.

The learned trial court convicted and sentenced the accused-appellant, as mentioned above.

Although this is a case where in the written-report the prosecutrix disclosed her age as 16 years and as 15 years in her statement recorded on 24.1.2002 under Section 164, Cr.P.C., and as 16 to 17 years before the trial court when her statement was recorded on 2.9.2002. As per the medical report (Exhibit P-6) her age was shown about 17 to 18 years. The trial court, in the impugned judgment, after considering the oral and documentary evidence on the record, recorded a finding that Sangeeta was aged above 16 years and in between 17 to 18 years. PW-11 Dr. Amar Singh Rathore, who medically examined Kumari Sangeeta, stated that there was no injury on her breast or private parts. She was habitual of sexual intercourse. In defence 15 letters (Exhibit D-3 to Exhibit D-17) were produced on the record, which are alleged to have been written by Sangeeta

to accused and said to be love letters. During the course of examination, Sangeeta denied these letters. PW-1 Sangeeta, in her statement, has specifically stated that when she went for natural call, the accused-appellant Bhawani caught-hold of her and ravished.

After considering the statement of the prosecutrix in detail, I am satisfied that the learned counsel for the appellant is right in not challenging the finding of conviction recorded by the trial court against the accused-appellant. Therefore, the order of conviction passed by the trial court is upheld.

So far as the prayer of the learned counsel for the accused-appellant for reduction of sentence of imprisonment is concerned, I find that accused-appellant was arrested on 20.1.2002 and since then he is in jail except for a period of 13 days i.e. 17.8.2003 to 30.8.2003, therefore, he has already remained in jail for five years and twenty-five days.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376

(2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Ram Kumar Vs. State of Haryana (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement

> of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram, (2006) 5 SCC 736, the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent

> was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

In the peculiar facts and circumstances of the present case, where, as referred above, 15 letters

(Exhibit D-3 to Exhibit D-17) have been produced on the record alleged to have been written by the prosecutrix, her medical report, and further looking to the finding of trial court in respect of age of the prosecutrix, I think it fit and proper to invoke the proviso of sub-section (1) of Section 376, IPC, and, in my opinion, ends of justice will meet in case the sentence of imprisonment awarded against the accused-appellant by the trial court under Section 376 (1), IPC, is reduced to a period of imprisonment of five years and twenty-five days, already undergone by him.

Consequently, the appeal of the accused appellant is partly allowed. His conviction under Section 376 (1), IPC, is maintained, but his sentence of imprisonment is reduced to a period of five years and twenty-five days, already undergone by him.

The accused-appellant is in jail, therefore, he be set at liberty forthwith in case his custody is not required in any other case.

(Narendra Kumar Jain) J.

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